ANNOTATION

of the

2010 MASTER AGREEMENT

between the

FOREST SERVICE AND NFFE-FOREST SERVICE COUNCIL

INTRODUCTION

The purpose of the Annotation is to provide both Parties with clarification of the intent of the language written in the Contract or with background information about a given topic. It is understood that the Master Agreement itself prevails over language in this Annotation should there be a conflict between the two documents.

Only Articles and sections thereof that need clarification are addressed in the Annotation.

PREAMBLE

The Preamble contains important provisions intended to reflect the Parties' desire to emphasize and reflect the tone of Labor-Management relations in the Forest Service; one that stresses partnership **and** which is characterized by interest-based problem solving. The Parties also recognize the importance of keeping an array of problem solving tools and techniques available to resolve issues that may arise. The signatures of both the Chief and the National Federation of Federal Employees-Forest Service Council (NFFE-FSC) President emphasize the personal commitment by the Parties to the contents of the Preamble.

ARTICLE 1 – RECOGNITION AND BARGAINING UNIT DESIGNATION

No Annotation

ARTICLE 2 – IMPLEMENTATION OF THE AGREEMENT

No Annotation

ARTICLE 3 – DEFINITIONS

No Annotation

ARTICLE 4 – EMPLOYEE RIGHTS

Section 6—For example, employees will be granted a reasonable amount of duty time for initiating, reviewing, preparing, and presenting a grievance. It is the employee's responsibility to communicate with their supervisor before using duty time to meet with their Union representative to prepare a grievance or exercise any other rights afforded in the contract. Employees may designate a Union representative, in writing, to act on their behalf with respect to release.

If the employee and his or her supervisor are unable to reach agreement, the time allowed should generally not exceed 4 hours for meeting with the employee representative and preparing a Step 1 grievance and should generally not exceed 8 hours for the preparation and submission of a Step 2 grievance.

The Parties' expectation is that the employee will typically be released from work at the time the request is made. However, it is recognized that in some cases, the employee's workload may not allow the immediate release, and the release needs to be delayed until later that day or until another day. In these cases, the supervisor shall allow the use of the approved amount of time as soon as possible.

The required documentation when time is denied is intended to be as simple as an e-mail to the employee stating the requested number of hours, the date requested, a brief

reason for the denial, and when the time will be granted.

Section 11—Some of the methods of resolving the conflict that may be used include counseling, training, team building, details, reassignment, or physically separating the employees in conflict for a “cooling off” period. If a reassignment to a different supervisor is granted, the change of supervision will not necessarily have an effect on pending personnel actions (for example, adverse action).

ARTICLE 5 – UNION RIGHTS AND REPRESENTATION

Section 1—The Union’s obligation to represent the interests of all Bargaining Unit employees does not require the Union to pursue employee concerns that the Union determines to be without merit; the law merely prohibits the Union from discriminating on the basis of Union membership (that is, paying dues) or lack of membership. Management officials should avoid any involvement in any alleged violations of this Union obligation, as it is a matter between the Union and the Bargaining Unit employees.

Case decisions allow the Union to refuse to represent nonmembers (employees who do not pay dues) in situations where employees are entitled by law/regulation to a personal representative of their choice, such as oral/written replies to adverse actions, Merit System Protection Board (MSPB) appeals/Equal Employment Opportunity (EEO) complaints, and court cases. The Union’s obligation to represent all employees without regard to Union membership applies only where the Union is the exclusive representative (for example, the negotiated grievance procedure).

The written designation will identify the particular duties and jurisdiction of each representative with sufficient clarity so that managers will know which representative is responsible for which representational function(s) and at which location(s).

Section 2—The right to represent employees in any grievance filed under the

negotiated grievance procedure in Article 9 is exclusively that of the Union. Employees may choose to represent themselves, in which case Management must notify the Union of the grievance and provide an opportunity for the Union to be a party to all discussions between Management and the grieving employee(s).

Section 3—There is no requirement that designated representatives be employees of the same forest, district, work location, or shift they are designated to represent. One individual may be responsible for more than one function or location. In these cases, it is particularly important to encourage use of current communication technologies to avoid unnecessary travel and unreasonable amounts of official time.

Section 4—The statutory definition of “formal discussion” is found in 5 U.S.C. 7114(a)(2)(A). Discussions can be a formal discussion if they cover any grievance, personnel policy or practice, or other general conditions of employment that may affect the Bargaining Unit; but meetings on topics such as timber harvest practices that do not concern any of the above are not formal discussions. Examples of formal discussions include family meetings, Continuous Improvement Process or similar meetings, grievance meetings (See Article 9), and orientation meetings (See Article 13).

The obligation of Management in regard to formal discussions is the requirement to notify the Union in advance so they may be present at the meeting. The Union may make its own determination of potential impacts to the Bargaining Unit and participate when it deems appropriate. The invitation (notice) goes to the Local Union steward designated for the area per Section 1.c. As noted in Section 1, the Union has the right to designate a different representative to attend the meeting. If the Union is properly notified and declines or fails to show up, the meeting may proceed without their participation.

The Parties recognize that some meetings held to resolve EEO complaints may be formal discussions. However, the case law is evolving with respect to Union statutory rights to attend formal EEO complaint resolution meetings. Nothing here is intended to

limit Union rights under the Statute with respect to EEO complaint resolution meetings. Also see Article 25.

Case law clearly identifies certain discussions as not being formal discussions:

(1) Individual counseling sessions.
(2) Meetings at which the employee is disciplined.
(3) Fact-finding or investigative meetings unrelated to a grievance (but these may be "Weingarten" meetings under Article 4.3(a).
(4) Meetings to discuss employee job performance.
(5) Meetings called to deliver work instructions or discuss job assignments.

Section 5—Generally, for recording official time on their time and attendance (T&A) form, Union representatives will use the appropriate Transaction Codes, currently:

35—Negotiations (limited to national-level negotiations).
36—Mid-term negotiations under Article 11 (all regional and forest level).
37—All contract administration and representational activities (including partnership activities) except negotiations and grievances/appeals/complaints.
38—Representation activities for the Union or employees in grievances/appeals/complaints.

However, for recording official time for shift differential, premium pay, or credit hours, Union officials should use the appropriate code (such as 04, 05, 11, 29), so they are paid correctly, and put explanation in remarks section indicating the amount of official time and category (35–38, above) for which the time was used.

Subsection 5.b—The Parties recognize that there are cases where the Union may choose to designate an official other than the Local official, including officials who are not employees, to handle particular matters. The Union is expected to communicate with the proper Management official regarding any travel and/or per diem that will be

requested and that needs to be approved prior to commencement. Factors to be considered in approving travel and/or per diem include, but are not limited to:

(1) Cases of major actions.

(2) The designated Union representative is not available.

(3) The designated Union representative is not qualified to deal with the representational need.

(4) Representational need calls for specialized skills.

(5) Promotion of efficient and proper administration of the Master Agreement.

Subsection 5.c—This provision only applies to permanent seasonal employees who are designated Union representatives. This is not a full-employment provision for those employees, nor does it entitle representatives to receive overtime or compensatory time for performing representative functions. Note requirement for mutual agreement.

Subsection 6.a—The process given in this section does not exclude the ability for Union representatives and their supervisors to craft a mutually agreed-upon alternative process. In the second sentence, “alternate arrangements” means the arrangements are mutually acceptable to the Union representative and the supervisor.

Subsection 6.b— “As far in advance as practical” is meant to encourage the parties to work together to identify known and potential upcoming union-assigned work so that Agency budgets and programs of work can be adjusted accordingly.

ARTICLE 6 – MANAGEMENT RIGHTS

No Annotation

ARTICLE 7 – UNION USE OF OFFICIAL FACILITIES AND SERVICES

Subsection 1.c—The intent of the term “cost considerations” is to factor in the costs of the exclusive space. There are situations, such as the costs of adding space to a facility

solely for a Union office, or providing more space when building a new facility, etc., where the high cost of such space makes it prohibitive.

Although exclusive office space may be secured, Management must have the capability to access the space in the event of an emergency or for legitimate security/law enforcement reasons and will have keys for these purposes. Except in emergency or law enforcement situations, Management will notify the responsible Union official prior to entry. The Union is not authorized to install their own locks on the office space or on Government-owned equipment/furniture (that is, file cabinets, desk drawers, etc.).

Subsection 2.a—Use of VTC equipment for Union representational purposes should be appropriately scheduled.

Subsection 2.c.2—Use of Government communications systems may only be used by Union officials authorized to communicate with Congress under Article 5.5(a)(7) or pursuant to negotiations under this section.

ARTICLE 8 - **PARTNERSHIPS, COLLABORATIVE LABOR-MANAGEMENT RELATIONS, AND PRE-DECISIONAL INVOLVEMENT**

Section 6—The National Parties recognize that a line unit may have both a Labor-Management Committee and a Partnership Council. The scope of a Labor-Management Committee is usually narrower than that of a Council. The intent here is not to establish forums with functions that overlap, but rather to keep the communication channels open through whatever means the Local parties support or find to be effective. Only Union representatives can represent Bargaining Unit interests on Labor-Management Committees.

ARTICLE 9 – GRIEVANCES

The person with the complaint is encouraged to start the grievance process as soon as

they have a complaint so that resolution can happen as soon as possible.

Subsection 4.d— If documents are provided through hard-copy mail only, then the 30-day timeframes given in the contract for the grievance and the grievance response start the day after the postdate on the hard-copy mail (or the confirmation/transaction dates if Fed Ex or UPS, etc.).

Ideally, “transmittal” should be done in such a way that it can be verified. In addition, because the timeframes are based upon date of transmittal, parties involved in grievance proceedings are encouraged to provide for “back-up” during times when they expect to be away from the office for an extended period of time.

Subsection 5.d—Only initial appointments are excluded from the grievance procedure.
Subsection 5.e—Although the classification of the position is not grievable, the accuracy of the position description is grievable per Article 14.

Section 6—A grievance regarding the same issue usually “bars” a subsequent MSPB appeal or formal Equal Employment Opportunity (EEO) complaint. The employee may appeal the formal grievance or arbitration decision to MSPB or the Equal Employment Opportunity Commission (EEOC) as provided for in their regulations.

A grievance does not bar a “whistleblower” appeal to the Office of Special Counsel or “individual right of action” appeals to MSPB arising from whistleblower allegations. If a whistleblower appeal is filed and accepted by MSPB while a similar grievance is in progress, the grievance will be cancelled.

A prior MSPB appeal or formal (not informal) EEO complaint will bar a grievance over the same issue.

Subsections 7.b and 8.e—The individual receiving the grievance notification (receiving official) will need to promptly review the issue, decide which Management official has

the authority to resolve it (deciding official), and then forward the notification to that official so that they can attempt resolution.

Subsections 7.d. and 8.f—Alternative Dispute Resolution Techniques**:** Examples are meeting(s) between the appropriate parties, a facilitated meeting, mediation, etc.

Subsections 11.e and 11.f—"Mitigating Circumstances" are when the parties recognize that there may be situations that could cause an exception if the time limits are not met. While the Parties believe such determinations will have to be made in the context of a given situation, and that the burden is on the late party to convince the other party or Arbitrator that the circumstances warrant consideration, the Parties generally interpret the clause to be an unusual situation that effectively prevents the party from meeting the deadline. The mere absence of an official from his or her office is not automatically or usually a "mitigating circumstance."

ARTICLE 10 – ARBITRATION

Section 2—The party invoking arbitration must request a panel of arbitrators prior to invoking arbitration so that a copy of the panel request will be included with the letter invoking arbitration.

Section 8—5 U.S.C. 7701(g) provides that an agency pays attorney fees if the employee is the prevailing party and the arbitrator determines that payment by the agency is warranted in the interest of justice. This includes any case in which a prohibited personnel practice was engaged in by the agency, or any case in which the agency's action was clearly without merit.

ARTICLE 11 – MIDTERM NEGOTIATIONS

Subsection 2(c)—The phrase "not fully resolved" refers to situations where, for example, 8 of 10 issues may be resolved collaboratively, leaving 2 issues that need to

be addressed through Article 11 negotiations. “Negotiate as appropriate” is intended to denote that not all matters discussed under pre-decisional involvement are subject to bargaining. The parties are advised to evaluate the negotiability of issues not resolved collaboratively before proceeding with bargaining.

Subsection 2(d)—“Dispute settlement agreements” clarifies that if the terms of dispute settlement agreements impact the Bargaining Unit, then there is a notification obligation for potential bargaining. This obligation must be met before implementation.

Subsection 2(e)—In accordance with established case law, unless there is an overriding exigency or necessary function of the Agency, Management is obligated to maintain the status quo during negotiations regarding proposed change(s) pending completion of the bargaining, which may include mediation and impasse procedures, if timely invoked.

Subsection 3(c)—Provisions for facilitation expenses in this section apply only to Article 11 negotiations.

Subsection 3(c)(1)—The parties are encouraged to avoid going to impasse over the contents of ground rules.

Subsection 3(c)(2)—By mutual agreement, the parties may make other arrangements for the facilitation expenses.

Subsection 3(d)(3)—In this section, “Local” refers to the Union Local, not to the geographic location.

Subsection 5(b)—Examples of negotiations that could be appropriate at Local levels are parking, lunchtime meetings, lunch and breakroom facilities and arrangements, facilities for daycare centers per Public Laws 99-190, facilities for dependent care centers if allowed by law or regulations, physical fitness centers provided through

Wellness Committees/Programs, transit subsidies, fire assignment rotations, provisions for assignment to overtime, safety, leave scheduling policies, and the impact and implementation of changing office/work facility conditions.

ARTICLE 12 - PRENOTIFICATION FOR UNFAIR LABOR PRACTICE CHARGE

No Annotation

ARTICLE 13 - ORIENTATION OF EMPLOYEES

Section 6—The time provided to the Union for meeting and speaking with employees cannot be used for internal Union business such as soliciting members or recruiting stewards. Appropriate subject matter includes, among other things, the exclusive role of the Union in representing employees, the existence and impact of any negotiated agreements, and the grievance procedure.

ARTICLE 14 - POSITION DESCRIPTION AND CLASSIFICATION

Section 1—There is a key difference between the assignment of ongoing (regular and recurring) duties required to be performed in the described position and those duties that are temporary or short term in nature (see Article 16.5). Supervisors and employees are not expected to be experts in position classification. However, they should focus on development of an inclusive description of the tasks or groups of tasks that occupy approximately 20–25 percent or more of the employee's time and that accurately reflects what the employee is assigned to do. They should then let the classification process determine what is series and grade controlling. The intent here is not to eliminate the flexibility of assigning undescribed "other duties," but to assure that duties that affect an employee's pay rate are included.

Examples of "duties that require special training, performance, or credentials" would include, but are not limited to, those that require the employee to be subject to drug testing or that require specialized training to handle hazardous materials or to obtain blaster certification.

Subsection 2.a— A PD can be amended for minor changes such as changes to locations, corrections of terminology, or addition of certification requirements. Normally, these changes will be documented on the Position Description Correction Notice (currently FS-6100-13).

Subsection 3.f—"Management shall refrain from temporarily reassigning an employee's work during the PD review if the sole purpose for reassigning the work is to avoid reclassification of the said employee's position" does not, nor is it intended to, interfere with Management's right to assign work. The review period does not serve as an insulated or protected period during which the employee's work cannot be reassigned for legitimate reasons. The intent of the Parties is that a supervisor cannot alter the employee's work assignment during the review period solely to alter the resulting classification.

Section 4—This section covers the situations where the accuracy of the PD has been established, but the classification of the position as to title, series, or grade has subsequently been called into question by the employee. The Forest Service Position Classification review process and the statutory USDA or OPM appeal rights are two separate and distinct procedures. Employees are not obligated to use the agency review process first; they may choose to go directly to the USDA or OPM appeal. However, the employee is encouraged to seek advice and review the OPM guidance on the subject prior to submitting an appeal, because the OPM determination is final.

Section 5—In the case where the classification decision was reached by the USDA or OPM that the position is properly classified at a higher grade, the 14-day timeline begins when the Forest Service is informed of the USDA or OPM decision. In setting the 14-day timeline, the Parties' intent is that Management will not continue to require or expect the employee to perform higher graded work without compensation once it has been established that an employee has been performing ongoing higher graded duties.

The Parties recognize that the employee would need to meet OPM qualification

standards and any governmentwide limitations to the amount of time they can be noncompetitively promoted must also be followed.

The Parties acknowledge that Management's decision to eliminate or redistribute the duties of a position falls within Management's reserved rights. As such, a grievance over Management's decision to eliminate/redistribute the grade-controlling duties instead of promoting the employee is sustainable only if the decision was arbitrary/capricious (for example, a prohibited personnel practice).

ARTICLE 15 - PERFORMANCE MANAGEMENT SYSTEM

No Annotation

ARTICLE 16 – PROMOTIONS AND DETAILS

Section 1—The last sentence clarifies that the provisions of this article pertain only to positions within the Bargaining Unit. Management is not obligated to follow Article 16 procedures for advertising or filling non-Bargaining Unit positions, even if Bargaining Unit employees apply for such positions.

Subsection 2.a—The term "shall be advertised internally" means internally to the Federal Government. Management may advertise internally and externally concurrently. However, Management will consider the internal applicants before filling a vacancy externally.

Subsection 2.a.8—Although this exception allows Management to advertise externally without having to advertise internally, it is understood that current employees may still apply for positions advertised through external procedures.

Subsection 2.d—Clarifies that Management may consider internal applicants concurrently with the external applicants.

Subsection 2.g—Accessibility to promotion documents reflects Privacy Act limitations. The Federal Labor Relations Authority (FLRA) has determined that the Privacy Act must be applied in making determinations on releasing information to the Union, weighing the individual's right to privacy against the Union's need for the requested information to perform its representational functions.

If a Union representative is one of the applicants for the position that the information is being requested, the Parties recognize that the information that can be released under the Privacy Act may be further limited.

Subsection 3.a—Employees may meet time in grade but may not have met all the requirements to be fully functional at the next higher grade level: examples include specialized training not yet completed; specific experience still to be gained; or credentials, certifications, etc., still to be acquired.

Supervisors are encouraged to submit the appropriate approvals for career ladder promotions prior to when they are due to avoid being out of compliance with Human Resource procedures.

Subsection 3.b—Lack of a 60-day prior written notice does not mean the employee automatically gets the promotion; rather, if the notice is late, the employee still gets the 60 days to improve and, if successful, the career ladder promotion is retroactive to the eligibility date.

Section 4—Exceptions to the 2 years of repromotion rights are reduction-in-force demotions that are covered in Article 35.

Subsection 6.d—A "Supervisory Unit" means units such as a staff unit in a Ranger District, a staff unit in a Supervisor's Office, a branch in a Regional Office, a staff in the Washington Office, a branch in the Albuquerque Service Center, Research Work, etc.

"Adversely Affected"—The addition of duties and responsibilities to a position adversely affects another *encumbered* position if the duties have been removed from one employee's position and assigned to another employee's position resulting in one employee's position being downgraded. There would also be an adverse effect if *new* duties were given to one position resulting an upgrade of the position, when like encumbered positions exist within the supervisory unit and could also have been assigned those new duties, because the other employees were not afforded the opportunity to compete for the upgraded position.

ARTICLE 17 – AWARDS PROGRAM

Subsection 3.e—The following chart should be used as guidance for nonmonetary length of service awards:

Years of Service	Recommended Award Value
5	$25.00
10	$ 50.00
15	$ 75.00
20	$100.00
25	$125.00
30	$150.00
35	$175.00
40	$200.00
45	$225.00
50	$250.00

ARTICLE 18 – WORK SCHEDULES

Article 18 has been significantly reorganized to create separate sections for descriptions of standard (Sec. 2), flexible (Sec. 3), and compressed (Sec. 5) work schedules. Sec. 7 addresses various administrative aspects, including how an employee may be placed on a particular alternative work schedule and removed from it. A new Sec. 11 addresses on-call status.

Subsection 2.d—The intent is that Management will typically provide a minimum 10-day advance notice when changing tours of duty and/or Regularly Scheduled Administrative Workweeks; i.e., notice should be provided soon after the information becomes available to Management. However, the Parties acknowledge that there may be appropriate exceptions; for example, occasions in which Management becomes aware of the need for the change less than 10 days in advance. In such a case, the intent is that Management will notify affected employees promptly after determining the need for the change.

Subsection 3.b.1.d – A gliding schedule does not have core hours.

Subsection 3.d – For part-time employees on a flexible work schedule, core days and core hours may be pro-rated based on their basic work requirement.

Subsection 3.d.3—Documentation of deviations from core hours may be as simple as approving the employee's timesheet.

Subsection 3.e.1.c—Employees cannot earn credit hours for traveling. However, once an employee arrives at their destination, credit hours may be earned, even though the employee is still in "travel status." For example, an employee's duty station is Denver, Colorado, and he or she needs to travel to Vallejo, California. The employee, regardless of whether he or she is nonexempt or exempt, cannot earn credit hours for traveling from Denver to Vallejo. However, once the employee arrives in Vallejo, the employee may earn credit hours for hours they elect to work, even though they are still in travel status. Employees who are eligible to earn credit hours may earn credit hours for work

performed while they are in travel status (such as phone calls, editing documents, etc.) even if they have not reached their destination.

Subsection 7.a—An employee's tour of duty will be recorded on their Time and Attendance report. In Paycheck 8, the appropriate block for this is entitled "Established Work Week and Hours."

Subsection 7.b —The Parties acknowledge that the standard workweek for full-time employees will consist of 5 consecutive 8-hour days (40 hours per week). This will be the default work schedule unless the employee requests and Management approves a different schedule, such as an Alternative Work Schedule (AWS). This is not intended to change work schedules for those employees who are already on an AWS.

Subsection 7.h.2—This provision applies when the training is conducted at a location other than the employee's home unit. Overtime for training is handled in accordance with 5 CFR 550, 5 CFR 551, and 5 CFR 410.

Section 11—See Article 19.7 for further discussion of standby pay.

Subsection 11.a.4 – In negotiating call-back radii, Local parties should consider the nature and urgency of the work and the time necessary to safely travel (seasonally adjusted) from the nearest established community to the duty location.

Subsection 11.b.2 – Normally, employees will not be assigned to on-call status for more than two consecutive pay periods, without a pay period off, unless the employee volunteers to be in on-call status.

Subsection 11.c – Other arrangements may include cell phone, pager, vehicle usage, etc.

ARTICLE 19 – PAY AND PER DIEM

See Article 28 (Fire) for information on hazard pay for prescribed burns.

Section 3—This section addresses several areas of employee entitlements related to per diem in which the Parties have particular interest. The intent of the Parties is to ensure Bargaining Unit employees receive the full benefit in these areas. The Parties also made a conscious decision to reference the Federal Travel Regulations as the governing regulation on matters pertaining to per diem rates, Travel Charge Cards, and travel advances.

ARTICLE 20 – LEAVE

Subsection 1.d – The references to 5 CFR 630.201 and 630.1202 are solely to use these definitions in the context of this contractual provision.

The intent of the Parties is to extend contractual leave entitlements for employees to care for family members who are excluded from the FMLA. The provision is not intended to be duplicative with respect to employees' spouses, sons, daughters, and parents. For these family members, employees may use FMLA entitlements.

Subsection 5.a – The hour limitations given in this section are based on the hours that would typically be worked. For example, if an employee typically works 80 hours per pay period, then 80 hours per pay period would count against the 120 hours. Normally, weekends and holidays do not count toward the limitations since employees typically do not work on these days. Per the Office of Personnel Management (OPM), temporary employees hired under the 1039 authority cannot be granted military leave.

ARTICLE 21 – DEALING WITH UNACCEPTABLE PERFORMANCE

Section 2 - Opportunity Period: In determining a reasonable period of time for an employee to demonstrate successful performance, consider the complexities of the employee's duties, length of experience in the position, prior performance record, training, and any other relevant factors.

Subsections 3.a(4) and 3.a(5) - Assistance during the PIP: In providing assistance, it is important that the rating official not assume part of the employee's responsibilities or assign the duties of the critical element to another employee. Such removal of duties and responsibilities during the opportunity period does not enable the employee to demonstrate the ability to perform the entire job successfully.

Subsection 3.b - The schedule of the PIP meetings will be communicated in the PIP letter. An employee may request additional meetings.

A PIP meeting is not a formal discussion. The role of the Union representative in a PIP meeting is to assist the employee in understanding what they must do to bring their performance to a successful level. A PIP meeting is not the appropriate venue in which to challenge the rating official's performance determination. If the finding of deficient performance has been grieved, discussions pertaining to the grievance should occur in a separate grievance meeting.

ARTICLE 22 - DISCIPLINE AND ADVERSE ACTIONS

Subsection 3.c - The intent of this subsection is that the employee should not be coerced to sign and may seek guidance from a Union official before signing an agreement. There is no intent or obligation on the part of Management to negotiate the terms of such an agreement, although a discussion between Management, the employee, and the employee's Union representative to clarify terms and conditions may be appropriate.

Subsection 4.c – The pertinent factors (Douglas Factors) are:

(1) The nature and seriousness of the offense and its relation to the employee's position and responsibilities, including whether the offense was intentional or technical or inadvertent or was committed maliciously or for gain, or was frequently repeated.

(2) The employee's job level and type of equipment, including fiduciary role, contacts with the public, and prominence of the position.

(3) The employee's past disciplinary record.

(4) The employee's past work record, including length of service, performance on the job, ability to get along with Federal workers, and dependability.

(5) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties.

(6) The consistency of the penalty with those imposed upon other employees for the same or similar offenses.

(7) The consistency of the penalty with the Penalty Guide.

(8) The notoriety of the offense or its impact upon the reputation of the agency.

(9) The clarity with which the employee was put on notice of any rules that were violated in the committing of the offense or had been warned about the conduct in question.

(10) The potential for the employee's rehabilitation.

(11) Any mitigating circumstances surrounding the offense such as unusual job tensions; personality problems; mental impairment; or harassment, bad faith, malice, or provocation on the part of others involved in the matter.

(12) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Subsections 5.a and 5.b – This is to be consistent with the Privacy Act (5 USC 552a (e)(2)). Situations in which it is not practicable to obtain information directly from the affected employee before others are questioned include non-administrative matters involving illegal activities which could result in criminal charges or which involve subjective alterable information. Further investigation may not be necessary if, for

example, the employee acknowledges the misconduct, or the management official decides the allegations are baseless.

Subsection 5.c - The intent is that Management will not withhold meaningful information on the status of an investigation or inquiry from the affected employee and/or the Union. This does not mean that substantive disclosure of investigative results is required or intended during the course of the investigation or inquiry.

ARTICLE 23 - PERMANENT SEASONAL EMPLOYMENT

Section 2: Template located in Appendix G will be followed and is not subject to further negotiations at the subordinate level. Annual agreements on starting and ending dates may be documented according to Local negotiated agreements.

ARTICLE 24 – TEMPORARY/TERM EMPLOYEES

Section 2—Reasons for making a term appointment include, but are not limited to, project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization (5 CFR 316.301).

Section 3—The word “suitability” is consistent with 5 CFR 731 (suitability as it pertains to an individual’s character or conduct that may impact the efficiency of service or preventing effective service of the position) and should be considered in making rehire determinations, in addition to the person’s qualifications.

Section 7—Information about “how rehire eligibility works” can be provided either through the orientation process for temporary employees or through the distribution of a fact sheet. The information should include the clarification that it is noncompetitive rehire “eligibility,” not a “right.”

Section 11—This section discusses time limitations and makes clear that the Forest Service intends to observe these as dictated by Office of Personnel Management (OPM) regulations. Successor positions are a key factor in correct implementation of both the OPM regulations and the Master Agreement.

Section 14—"Publicized" for the purposes of this section does not mean "advertised." However, these working days can be part of, or run concurrently with, any Career Transition Assistance Program requirements to publicize such vacancies.

Section 16 - Temporary employees do not have grievance rights for termination due to misconduct or poor performance. They do have reconsideration rights. Temporary employees covered by this Master Agreement do have grievance rights for other disciplinary actions.

ARTICLE 25 – EQUAL EMPLOYMENT OPPORTUNITY

Sections 7 and 8—The same Union representative may serve in both roles described in Sections 7 and 8.

ARTICLE 26 – EMPLOYEE ASSISTANCE PROGRAM

"Employee Assistance Program (EAP)" is the replacement term for the "Concern Program." The term "Concern Program" is no longer in use in the agency.

Subsection 1.c—The employee has the right to bring a Union representative to meetings with EAP program advisor or counselor.

Section 3—Explains supervisory obligations when dealing with employees who may be referred to EAP, as well as the potential impact on performance or conduct actions. Nothing in this section is intended to preclude Management from taking appropriate disciplinary and/or conduct action consistent with applicable CFR 432 or 752

procedures.

Subsections 3.a and 3.c—The intent is to have Management deal with poor performance through initial discussions and, absent improvement, make the employee aware of the EAP program (i.e., refer them to the EAP). Throughout this process, the focus should be on the performance or conduct, rather than on what may be the cause.

Subsection 3.i—This subsection is intended to reflect current regulatory and case law on consideration of employees who are willing to seek treatment and their rehabilitation success on pending conduct and/or performance actions. Language is not intended to preclude Management from taking action.

Section 4—Emphasis is placed on the confidentiality of employee medical records, including those generated in conjunction with the EAP program.

ARTICLE 27 – SAFETY AND HEALTH

Section 2—Although there still may be an obligation to negotiate the plan, the substance of internal security practices are non-negotiable.

Subsection 4.c—Negotiation means implementation procedures and appropriate arrangements to mitigate impacts to employees due to “Smoking policies.” Examples are designated outside smoking areas at Government facilities, appropriate ash and filter receptacles in established outside smoking areas, smoking cessation programs, etc.

Section 5—The committee does not conduct or participate in accident investigations.

Section 7—The provision for Local negotiations is of the type and level of safety equipment identified by the JHA, not negotiations over the contents of the JHA itself.

Subsection 12.c—The intent of this subsection is to recognize the employees' right and responsibility to suspend (stop doing) work whenever the environmental conditions have become so extreme that they pose an immediate danger to the employee that cannot be readily mitigated by protective equipment or technology. An "immediate danger" exists when there is a direct connection between the condition and the safety of the employee, and when nothing (time, equipment, or technology) is available to intervene and prevent injury or death to the employee. It is also the employee's responsibility, where he or she has suspended work under this provision, to take prompt and reasonable action to communicate the situation to his or her supervisor, or his or her acting supervisor in the supervisors' absence. Suspending work and removing oneself from immediate danger means protecting oneself from the danger at the worksite, but it does not mean leaving work. The employee is to otherwise remain on duty.

Section 16—"All documentation that is required by OWCP within the agency's control" means that Management does not have to search out other information that OWCP might request.

If the employee is compelled to leave their place of assignment and has no transportation or is unable to drive, the Agency may take actions such as arranging transportation for the employee to reach their place of residence or medical facility for treatment. Transportation may be by Government, public, or private means which may include emergency medical vehicles. Determination of the appropriate means of transportation or any other actions rests with the Agency.

Section 19—Hourly breaks away from the terminal are not rest breaks. "Diversion" means doing other work for 10 minutes each hour.

Subsection 20.b—The term "concerns" is not defined but could include confidentiality.

Section 23—The intent is to have two-way voice contact, whether by radio, cell phone, or other portable devices. The language "as otherwise appropriate for the protection of

the employee" refers to situations where either a JHA is silent on the use of electronic communication equipment for employee protection or to situations where a JHA was not documented and a determination is made that electronic communication equipment is necessary to protect the employee.

Section 25—Another appropriate training session that fits the Parties' intent is the current International Association of Machinists and Aerospace Workers safety training that is available for the Union safety representative. This training is safety training and is not considered Union sponsored training and is not subject to provisions under Article 31.

ARTICLE 28 – FIRE AND OTHER INCIDENTS

Subsections 1.c and 9.a—The Parties agree that all employees are subject to supporting incidents, depending on their abilities and qualifications, as needed. The Parties recognize "support" could be either direct (for example, assignment to an incident command) or indirect (for example, performing administrative or other incidental tasks that complement agency suppression resources).

Section 2—The Union represents Bargaining Unit employees at all incident command posts, regardless of size or who runs the incident. The number of employees assigned to the incident is merely a trigger as to when the FSC Vice President must be notified.

Subsection 6.c—The list in Section 6.c is not all inclusive.

Sections 10 and 11—In making fire suppression support assignments, consideration will be given to personal hardship situations per Article 42. Such fire duties need not be reflected in the employee's position description unless criteria contained in Article 14.1 are met.

ARTICLE 29 - GOVERNMENT-FURNISHED QUARTERS

Subsection 1.a—This subsection addresses the Union's role in determining who is assigned housing. Management can unilaterally assign housing to an employee based on Management's need to protect Government property or to render service to the public. This is called "required occupancy" and, when Management does so (which is rare), the rules and policies about use of the house are considered to be conditions of employment and are, therefore, negotiable if the employee is in the Bargaining Unit. For remaining housing units without required occupancy, Management is obligated to locally negotiate a housing-occupancy policy, if requested by the Union, because the question of which employee is offered (and voluntarily chooses whether to occupy the unit) occupancy of the house is still considered to be a condition of employment. However, further rules and policies regarding use of Government-furnished quarters are not usually considered to be affecting conditions of employment and therefore are not considered to be negotiable under the Statute. Once an employee voluntarily occupies Government housing, the relationship is considered to have changed from employer-employee to landlord-tenant. The last sentence uses the word "may" to reflect that Management is not obligated to negotiate the rules or policies.

ARTICLE 30 – EMPLOYEE TRAINING

See Article 31 – Labor Management Training for what was formerly covered in the Union-Sponsored Training section of this article.

ARTICLE 31 – LABOR-MANAGEMENT TRAINING

Section 1—The Union-sponsored training section covers both training where the Union has control over the agenda and has used their own resources to develop and hold the training, and training provided by third parties that meets the intent of this Article.

Subsection 1.c—Travel expenses and per diem can be paid, but tuition and/or registration fees are not paid or reimbursed by Management.

At times, more than 40 hours may be appropriate, such as for the training of new officials, etc.

The training plan is not limited to courses in the course list provided per Section 1.b.

Subsection 1.i—Travel expenses and per diem for employees attending Union conventions are not payable, even if training occurs at the convention. Although not stated in the Master Agreement, if such training is determined by Management to be of benefit to the Forest Service, employees may be authorized a specified amount of official time to attend.

ARTICLE 32 – WORKFORCE RESTRUCTURING AND PLACEMENT SYSTEM

General Comment—All sections of this article have been substantially rewritten and reordered from the 2000 contract. The title has been changed to Workforce Restructuring and Placement System (WRAPS) to reflect that the WRAPS and Pre-WRAPS processes are not simply for the purpose of workforce reductions. The competitive areas have been changed, the use of identification areas has been eliminated, and the standard default commuting area has been expanded. The Parties have also incorporated use of the WRAPS process to increase placement opportunities for employees affected by reduction in force (RIF).

Section 1—This section provides a “Pre-WRAPS Process” whereby units who are planning to reorganize have the option of developing a plan that enables the movement of employees into a new organization by reassignment without first formally identifying which employees are subject to displacement under Section 4. This section has been changed to state that parties “at the appropriate level” may use the Pre-WRAPS Process. This recognizes that the National Parties may also develop and use Pre-WRAPS for organizational changes that affect multiple regions. The national rules, also referred to as Pre-WRAPS criteria, have been rewritten and are included as an

addendum to the Annotation for this article. The only significant change from the previous version is that intermediate-level plans no longer require national-level approval.

The scope of the Pre-WRAPS process may extend beyond changes to the organization to include employees affected by downsizing. Although “downsizing” frequently follows and is linked to “changes to the organization,” there are still occasions when there is downsizing not linked to a change in the organization or when there is downsizing that must be accomplished after a change(s) to the organization had been implemented because there are more employees than there are positions in the “new” organization. The intent is that the parties at the appropriate level may use the Pre-WRAPS process to attempt to first place their employees in positions within their own organizations prior to downsizing.

Plans developed at the local or intermediate levels must follow the rules established by the National Parties, which are intended to ensure overall consistency between plans, and be in compliance with Forest Service Handbook (FSH) 6109.12, 23.2 “Order of Consideration When Filling Vacancy.” Nonetheless, it is expected that each Pre-WRAPS Plan will be unique to the situation that precipitated it. A plan for several units within a region, but not all units, is still considered to be a plan at the intermediate level. It is the expectation of the National Parties that pre-WRAPS plans are to be a product of a collaborative effort by the parties at the appropriate level. Any provisions of such plans are not precedent setting for any other pre-WRAPS plans. Pre-WRAPS plans developed at the local level must be submitted to the intermediate-level parties for approval.

Under the pre-WRAPS criterion 4, plans involving two or more intermediate-level Parties need the approval of all the intermediate-level parties involved. However, this is not meant to preclude negotiating such plans on a national level, in which case intermediate-level party agreement is not required.

When employee placement under a Pre-WRAPS Plan has been completed and there are still employees to be displaced, then the identification and placement procedures of Article 32 will be used unless Management then determines to implement RIF and WRAPS concurrently. It does not change the intent of Section 3 wherein Management decides which positions to abolish, but rather recognizes that a Pre-WRAPS Plan is a placement plan for employees affected by changes to the organization and downsizing (abolishment of positions) and that there may be occasions where, despite best intentions, there are still employees left to be placed (to be displaced) after the Pre-WRAPS Plan's placement efforts are concluded.

Section 2—This is a new Section. The Parties agreed that for understandability it was best to describe what the WRAPS system was intended to do and to provide definitions of key terminologies.

Subsection 2.a—The terms "affected employee" or "subject to displacement" are used in place of the term "surplus" because employees found the term "surplus" offensive. Their meaning and intent however are not changed, and employees "subject to displacement" are those meeting the definition of "surplus" in 5 CFR Part 330, subpart F.

Subsection 2.b—The term "vacancy" is defined both to provide consistency with the definition in 5 CFR Part 330, subpart F, and Agency policy in FSH 6109.11 Chapter 20. An affected employee is entitled to placement priority to appropriate positions in their commuting area that are expected to last longer than 120 days. The affected employee's position of record and career tenure do not change if they are placed in a position that might otherwise have been filled under temporary (not to exceed 1,039 hours) or "term" hiring authorities. The Parties agreed that placing employees outside their commuting area on a time-limited basis would meet neither employee nor Management interests and could result in incurring unnecessary transfers of station. Further, the Parties agree that an affected employee placed in a short-term position of less than 1,040 hours (6 months) should not be denied priority consideration for more

permanent placement opportunities.

Subsection 2.c—The competitive areas have been changed. A competitive area is defined based on the administrative subdivision of the agency (Unit) and commuting area. The previous competitive areas were based entirely on administrative subdivisions. The emphasis is now placed on commuting area. The term, “Identification Area,” and its use in the identification process has been eliminated.

Subsection 2.c.10—Provides the parties faced with having to identify employees subject to displacement in nonstandard organizations the option to establish competitive areas to better fit their needs. Setting of such competitive areas is only for identifying employees under Article 32 (has no effect on RIF under Article 35). In changes from past practice, both parties do not have to agree to negotiate, but either party may initiate the negotiation, the results of which are only approved at the national level. Parties are cautioned to consider effects of applying nonstandard competitive areas in WRAPS if a RIF may be implemented soon afterwards.

Subsection 2.d—Commuting area, is as defined in Article 35 Subsection 8.d. (Also see discussion in Annotation for Article 35.) The commuting area is critical to both the identification and placement procedures in WRAPS. It is a single definition but its application may be different in each context.

When commuting area is applied in the context of defining a competitive area for the purpose of identification of affected employees, the competitive area is limited by the administrative subdivision of the agency (for example, a Forest) that is abolishing a position, even if there are two or more administrative units that share a common commuting area or in some cases share a common duty station.

Though uncommon, the Parties recognize that when a unit is utilizing commuting area in establishing competitive areas, there may be duty stations of that unit which could be included with more than one other duty station because the commuting areas overlap

and not all of the duty stations involved fall within a common commuting area. When dealing with such situations, first consider which duty stations have the most functions in common. Second, consider which grouping would provide the greatest opportunity for competition in the retention/identification process.

For example:

Duty Station: “A” <- 30 mi -> “B” <- 45 mi. -> “C”
(28 FTEs) (27 FTEs) (16 FTEs)
(FTEs = Full time equivalents)

(Duty stations “A,” “B,” and “C”). “B” is in the middle and clearly within the same commuting area as both “A” and “C,” but “A” and “C” on opposite ends, could not reasonably be considered to be in a common commuting area due to distance and/or travel routes.

Scenario 1: “A” is a forest supervisor’s office, “B” and “C” are ranger district offices. “B and C” would most likely share the most functions in common and would provide the greatest opportunity for appropriate competitive level groupings.

Scenario 2: If “A,” “B,” and “C” are all ranger district offices, the intent and expectation is that the smallest of the units (“C”) would be included with “B” in order to provide the greatest possible opportunity for employees of the smallest district to have competition for retention.

When commuting area is applied in the context of placement procedures, it is not limited by the competitive area (that is, by an administrative subdivision of the agency). An affected employee receives equal priority consideration for vacancies in the local commuting area regardless of administrative subdivision. When there are two or more administrative units (that is, competitive areas) that share a common local commuting area, or in some cases even share a common duty station, those units will adhere to a

common local commuting area definition. (See Subsection 5.d.(1) for further discussion of placements within the local commuting area).

Subsection 2.e—The definition of "competitive level" has not changed. OPM's definition will continue to be used, both in this article and in the referenced Article 35 (Reduction in Force) and the Annotation thereto. Though not specifically stated, Management recognizes its obligation to reaffirm the accuracy of PDs, classification, and competitive-level assignments of both existing encumbered positions prior to applying identification processes and for new positions prior to placement of employees into them.

Section 3—This section contains the list of reasons for which Management can decide to eliminate an encumbered position. Management's decision is the starting point of the process under which affected employees will be identified under Section 4. It also sets a specific timelimit (that is, "the current or next fiscal year") that a position must be abolished in order to trigger the identification of affected employees. Positions that may be identified for abolishment beyond the next fiscal year would not result in employees being identified for placement in the WRAPS system. As recognized in the employee identification process set forth in Section 4, the affected employee may or may not occupy the position to be abolished.

This section reflects Management's obligation to use, and document, a systematic process typically used in the unit's program development, planning, and budgeting process to identify the position(s) to be abolished. The intent is to provide a solid basis and rationale for identifying those positions and to provide the information necessary to meet the notification requirement in Subsection 4.b. The Civil Rights Impact Analysis (CRIA) requirement is highlighted to ensure it is completed as part of the assessment process.

Section 4—This section contains the identification procedures used to determine which employee(s) are affected by the abolishment of position(s), and also sets the minimum

notification requirements. It has been substantially reordered and rewritten. The Parties recognized that there may be situations when both WRAPS and RIF are necessary, and this section clarifies that RIF identification procedures take precedence over those in WRAPS once the management unit involved has declared a RIF. Though not specifically stated, if WRAPS procedures have been applied and there is a subsequent application of RIF procedures, employees involved in the RIF will be removed from WRAPS prior to issuing RIF notices and RIF rules would be used in identifying employees to go on WRAPS. The only exception to this would be an employee who is on the WRAPS list and has accepted a voluntary offer of placement outside the affected competitive area and who declares a wish to continue the placement action. Such subsequent application of RIF procedures may change which employee(s) are affected for WRAPS placement purposes. For this reason, the unit and the parties at that level are cautioned to appropriately analyze the likelihood of the need to RIF in order to minimize the possibility of having to “undo” WRAPS actions.

Subsection 4.a—This subsection sets the order of precedence that is to be used in determining which one(s) of a group of employees (competitive level) is affected by the abolishment of the position(s). It provides the opportunity for one or more employees in the same competitive area and competitive level to voluntarily offer in writing to retire, resign, or be designated as being subject to displacement. In a departure from previous agreements, it is recognized that if the employee’s offer of any one of the options is accepted by Management, it constitutes the employee’s binding agreement. When Management receives more offers than there are positions to be abolished in that competitive area and competitive level, consideration will be given based on seniority, with the employee with most service considered first. Consistent with case law, the action may be considered irrevocable based on potential impacts on other employees and agency costs associated with maintaining employees in positions. Case law has also found that catastrophic, life-changing events may justify that the employee be released from the agreement. The Parties have established a basic timeframe for the effective date of retirement and resignation actions. The 75-day timeframe approximates the length of time the unit abolishing the position could normally expect to

effect a placement of the affected employee if the employee had been registered in the WRAPS. The Parties also recognized, and provided for, circumstances where the unit may be willing to retain an employee who is resigning longer than the basic 75-day timeframe to accommodate the employee's needs. This same flexibility was not specifically added for those who decide to retire, but when setting effective dates, units should review prospective retirement dates of employees' offers and take care not to miss opportunities to reduce impacts on other employees. The possibility the unit may be simultaneously conducting RIF, and only using WRAPS to increase the placement opportunities for the affected employees, has been recognized and incorporated in the order of precedence.

Subsection 4.b.1—This notification is made after the management unit has received approval of its request to abolish encumbered positions. The intent of this notification is to serve as a "canvass letter" and to provide the employees with the basic information they will need, in sufficient detail, to make informed choices and begin planning for changes in their professional and personal life. The employee responses to this notice are used in the identification process in Subsection 4.a. The expectation of item (i) is that the employee's Servicing Human Resources Office (SHRO) will provide reasonable and timely counseling and/or access to additional resources necessary to answer clarifying questions should the employee request additional information.

Subsection 4.b.2—This notification is provided to the affected employee(s) after identification procedures have been completed. The intent of this notification is to provide the affected employee with a specific explanation of the reasons the position was identified for abolishment (Section 3) and how that employee was identified using the process in Section 4.a. The intent of the notification is also to provide the employee with a briefing on WRAPS placement processes, what his or her entitlements are, and the opportunity to ask clarifying questions. The phrase "in person if possible" reflects the National Parties expectation that reasonable efforts will be made to provide the affected employee a personal and private forum for the receipt of the notice and to also provide them the opportunity to meet in person with responsible Management official(s)

regarding the notice.

An affected employee is entitled to reasonable amounts of official time and travel as may be required to accomplish the notification, counseling on benefits and entitlements, and completion of his or her registration and qualifications information. A permanent seasonal employee on his or her off-tour is entitled to be returned to pay status at the employee's election.

Subsection 4.b.2.g—The WRAPS registration procedures and preregistration record are to be included as an attachment to the notice. The intent of providing this information at the time of the notification is to give the employee sufficient time to prepare his or her personal information for registration as described in the process in subsection 4.c. The registration procedures information must include a detailed instruction for the employee's access to his or her record in the database and information that generally addresses the implications of data to be provided by the employee. The employee's preregistration record is a summarized record that will reflect the employee's basic employment information as contained in the employee's records at the National Finance Center and as contained in the employee's Official Personnel Folder (OPF). The purpose of providing the summarized record is to simplify and facilitate providing the employee with the opportunity to review essential information for errors and omissions, and to provide them with the opportunity to identify information they believe needs to be corrected. The employee's review of the preregistration record is not to be construed as replacing or in any way reducing the employee's right to access and review the content of their OPF if they choose to.

Subsection 4.b.3—The intent of this notification is to provide the Local Union the opportunity to meet its statutory obligation to represent the interests of the Bargaining Unit. It is not limited to copies of notices to Bargaining Unit employees. Copies of notices do not include any personal information attached to the notice. The information is to be provided at the same time, or as close to the same time as possible, as it is provided to the employee(s). The Parties recognize that there may be circumstances

where delivery of a subsection 4.b.(2) notice would not include a formal discussion.

Subsection 4.c—Clarifies that there is only one servicewide (national) WRAPS database and describes the basic procedures, timeframes for registration, timeframes for making changes in the employee's record, and access to the database.

Subsection 4.c.2—The employee will have access to their record in order to complete initial input of their basic work experience, location, and grade preferences; their interest in short-term, time-limited vacancies; and to identify any hardship and special needs they wish to have considered in the placement process. Geographic preferences may be as broad as one State or as narrow and specific as a duty station. Management is not obligated to offer a time-limited position of less than 1,040-hours (6-months) duration unless the employee has indicated in his or her registration record that he or she will voluntarily accept such a position. (Also, see Subsections 2.b and 5.c.)

Subsection 4.c.3—The employee has the opportunity to provide any updated and current experience, education, and training information to be considered by Management in determining the job series and specialties that the employee is qualified for. Though not required, it is recommended that the employee provide a resume or bio-sketch to facilitate qualification determinations, and that the employee's SHRO provide counseling and assistance to the employee in completing his or her resume. The offer to communicate with their SHRO will be made, but the employee will be expected to request and schedule these discussions. Implications of choices made by the employee in completing his or her employee data record will be explained to each affected employee who requests such communication by the SHRO after their review of the completed data record. Only the SHRO will have access to enter and/or edit the occupational preferences, based on qualification determinations.

Subsection 4.c.4—This subsection sets the basic 14-calendar-day timeframe for the employee's completion of his or her data record as described in subsections 4.c.(2) and 4.c.(3). This timeframe is measured beginning on the day following the employee's

receipt of his or her subsection 4.b.(2) notice (“formal WRAPS letter”). The intent is that both the employee and Management are expected to be timely and responsive in meeting their respective obligations in the notification and registration procedures. It is also expected that the employee will have received the information and specific counseling required for them to make informed choices in completing his or her record. It also recognizes that either the employee or Management may be affected by circumstances beyond their control that prevent completion of the registration record within the timeframe and provides for appropriate extension prior to activation of the record in the WRAPS database. The party requesting the extension must notify the other party. The Section 5, 60-day voluntary placement period begins on the calendar-day following activation of the employee record.

Subsection 4.c.5—After completion of his or her initial data record, the employee will have “view” access to his or her record at any time. The employee’s edit access will be limited to his or her location and grade preferences, and his or her special placement needs during the 3-work-day window. Although not stated in contract language itself, the Parties’ intent is that if the employee is prevented from accessing his or her record directly, for any reason, during the 3-work-day window, either the window will be adjusted or he or she may request that changes be input to his or her record by the SHRO. Also, this subsection clarifies that only the SHRO will have edit access to the occupational series, based on qualifications.

Subsection 4.c.6—This subsection is a change from previous practices where the Union, at any level, had to request a copy of the WRAPS list. Designated officials at the national level of the Union will now have read access to the WRAPS database at any time. Distribution of WRAPS information from the national level to the intermediate and local levels of the Union will be “sanitized” and limited to only the basic summary information such as numbers, series, grade, unit, work schedule, “days on list,” mobility/location preference, etc.

Section 5—The placement procedures have been substantially rewritten and reordered

from the 2000 Master Agreement article. The Parties have incorporated several new considerations that are intended to ensure certain basic requirements of 5 CFR 330, Subpart F and G, are met, and also to provide more timely procedures for the offer and acceptance/declination processes.

Subsection 5.a—This Subsection sets the tone and intent for Section 5. The phrase, "counseled and afforded every opportunity," means that both employees and Management work in a shared effort to find placements that meet both the needs of Management and the employee. The Federal Travel Regulations, Forest Service past practice, and Forest Service manual direction consistently support transfer of station payments.

Subsection 5.a.2—The phrase "may consider" reflects that this is not an employee entitlement, and it is entirely at Management's discretion to apply or not apply these options for filling any given vacancy based on Management's "job-related" determination of its need to have a fully qualified employee in that position. The term "retraining" has been added to reflect that it is also a Management option. The phrase "a specified period up to 365 days" reflects both that there may be legitimate job-related reasons for a shorter timeframe and that the Parties intend that the timeframe be identified in advance so that both the affected employee and the receiving unit have a clear understanding of when the employee will be expected to be at a full performance level in the offered position.

Subsection 5.b—The phrase "and explanation of" obligates Management to provide affected employees with information about, and specific orientation to, the various external placement assistance programs and available Workforce Investment Act benefits.

Subsection 5.c—(Also see Subsection 2.b) This subsection makes a clear distinction between time-limited vacancies of less than 1,040 hours and those expected to be longer in duration. It clarifies procedures for further/future placement priority when an

affected employee has been placed in a time-limited position within his or her commuting area. The Parties' intent here is to not limit the employee's voluntary opportunities to be placed in a position without time limitation. When placed in a time-limited position, the affected employee's career tenure and position of record are not affected.

It is also the Parties intent that the time-limited nature of the position predetermines that the position will eventually be abolished. It would not be necessary for the Management unit in which the affected employee is placed to follow the identification procedures in Sections 3 and 4 in order to provide the affected employee his or her WRAPS priority placement consideration, or discontinued service retirement, when the time-limited position is coming to its end. However, if there are further changes to the organization, which require the application of WRAPS or RIF identification and placement procedures while the employee is in such time-limited position in that organization, the employee must not be excluded from those processes. The composition of the tenure of employees in the competitive level may have changed during the time-limited assignment, or RIF may have been declared, and the employee's retention and assignment rights must be considered in the new context.

Subsection 5.d—This subsection has been revised and renumbered from the 2000 Master Agreement article. It shows the relationship, sequencing, and methods for making placement offers under the WRAPS. Consideration by SCD applies to all three priority levels. For placement purposes, "matches within the same nationally established competitive level" also applies to all three priority levels, and purposefully does not consider further subdivision of the competitive level by either suffix code or regional supplement. Note that the option of modification of qualifications is only included at 5.d.(1)(g). The intent here is to reinforce the Parties' long-standing preference for local units to "take care of their own."

Subsection 5.d.1—Emphasis remains on considering placements within the identified employee's local commuting area first to minimize transfers of station. When applied in

the context of the placement procedures, a commuting area is inclusive of all agency duty stations in that commuting area, regardless of administrative subdivision. So, the abolishment of a position and identification of an affected employee does not cross administrative boundaries, but the placement priority for that affected employee, within the commuting area, does cross administrative boundaries. (See section 2.d. for further discussion of commuting area.)

Subsection 5.d.3—Offers may be made of affected employees from locations outside their preferences either as a firm offer, or as a contingent offer. Firm offers outside the employee's preferences do not count against the limitations in 5.e(7). Employees may also receive directed reassignments outside their preferences consistent with 5.f.

Subsection 5.e—This subsection introduces several new and significant changes from the 2000 Master Agreement article regarding how and when placement offers are made and how they are accepted or declined. A key point that has not changed is that only offers will be made to the employee, "inquiries" and "outreach" communications to WRAPS employees from receiving units are not appropriate and should not occur.

Subsections 5.e(1) through (6)—Offers are made to the employee through appropriate Line and SHRO employment officers of the employee's home unit. The expectation of the Parties is that local managers and their affected employees are responsible to make reasonably suitable arrangements to permit timely communication of offers. "Contingent offer(s)" is a new concept, allowing concurrent offers to be made to multiple employees. The Parties intent here is to significantly reduce the time required for a receiving unit to either place a WRAPS employee or "clear WRAPS" when more than one WRAPS employee is qualified for the vacancy. The past practice of making offers consecutively, both unduly extended the timeframe of the offer and acceptance/declination process, in some cases it also prevented employee(s) from receiving an offer of voluntary placement that would have better met their preferences and needs. This new procedure allows a "firm offer" to be made to the employee with the highest assignment rights to the position, while at the same time offering the

position to those with lesser assignment rights “contingent” on the acceptance or declination of the “firm offer.” So, an offer made to an employee with lesser assignment rights could change character and automatically become a “firm offer” (and count as such) if the employee(s) with higher assignment rights to the position declines the offer. “Higher assignment rights” refers to the priorities established in 5.d. Employees are advised to treat a contingent offer as they would if it were communicated as a firm offer. The Parties have also formalized the timeframes for the employee’s acceptance or declination of offers. The Parties’ expectation here is that, at this point in the process, the employee has had sufficient lead-time to prepare themselves to make these decisions. The Parties also recognize that the employee may need some additional time to further research the local conditions of the location that is being offered. This is reflected in the difference between the response timeframes in (5) and (6).

Subsection 5.e.7—This subsection introduces another significant change in the offer and acceptance/declination process. It is, in effect, a forfeiture clause. The Parties consider three firm offers (including contingent offers that automatically became firm offers), which meet the employee’s stated preferences, to be a reasonable effort on the part of Management. This clause does not necessarily preclude the employee from continuing to receive offers of voluntary placement, but the employee does relinquish the higher assignment consideration afforded them by 5.d.(2) in the voluntary process. That is, the employee would only receive offers as if they were in category d.(3); he or she would receive offers for his or her preferred locations only after other WRAPS-listed employees with the same preference had received the offer and declined it.

Subsection 5.e.9—This subsection reaffirms and continues unchanged the minimum 60-day voluntary placement period provided in previous iterations of WRAPS. “Unless otherwise placed” means that the employee could be placed by those processes described in Section 5 of this article; or as the result of a determination that the subject position can be funded/retained in the current organization is removed from the WRAPS by the home unit; or through the operation of agency staffing functions (e.g., Merit Promotion Plan). It also includes, but is not limited to, action taken either by the

employee (e.g., resignation, transfer, or retirement) or by Management (e.g., by RIF or removal for failure to accept a directed reassignment within his or her commuting area). The employee may continue to receive offers of voluntary placement beyond the 60-day minimum.

Subsection 5.f—This subsection introduces several new and significant changes from the 2000 Master Agreement article regarding how and when directed reassignments may be made from the WRAPS. It retains and reaffirms the past practice that all affected employees actively registered in the WRAPS for placement are subject to a directed reassignment.

Subsection 5.f.1—Incorporates into the WRAPS process Management's statutory and regulatory right to reassign an employee within the employee's commuting area at any time after the employee has been determined to be affected by the abolishment of a position. An "appropriate position" means a position at the same grade and tour of duty as the position from which the employee was displaced.

Subsection 5.f.2—Eliminates the past practice of directing the reassignment of employees based on which employee had been on WRAPS the longest. Directed reassignments now utilize the priorities established in Subsection 5.d including consideration of the employee's preferences and are based on seniority according to Service Computation Date (SCD)—most service first. Management will not initiate directed reassignments until after employees have been actively registered in the WRAPS for 60 days.

Subsection 5.f.4—The effective date for directed reassignments is the effective date of the personnel action and is different than the reporting date. This subsection recognizes that establishing the reporting date normally is negotiated between the gaining and losing unit and sets a minimum standard of 60 days. It also recognizes that, if agreeable to the employee, it can be a shorter timeframe.

Subsection 5.f.5—Sets the basic response timeframes for an affected employee to accept or decline a directed reassignment.

Subsection 5.f.6— The “return rights” provision of previous iterations of WRAPS has been changed, although the basic intent remains the same. As applied, “return rights” were at the employee’s option, but Management was obligated to contact the employee and offer the position. This new provision continues to be at the employee’s option, but places the responsibility on the employee to apply to the position and notify the SHRO of their rights. “Former or like positions” means either the same position or clearly a successor to that abolished position previously occupied by the employee. Parties are encouraged to attempt to resolve disputes arising from application of this term at the local level. As necessary, the Parties will provide additional guidance on the definition of successor positions based on the types of disputes that may arise in application of this subsection, case law, and contract negotiation history. “Greater placement rights” refers to the “Order of Consideration When Filling a Vacancy,” that is attached to this Annotation.

Section 6—The Parties recognized that the specific provisions for monitoring of WRAPS are dependent not only upon interpretation of the provisions of this article but also upon the actual application of the procedures. Therefore, the Parties have entered into a separate Memorandum of Understanding for the monitoring of WRAPS to allow appropriate changes, if necessary, for how the Parties accomplish the monitoring without reopening the MA article itself.

Subsection 6.a—It is understood that problems attributable to the WRAPS may be systemic (that is, inherent in and attributable to the actual process) or administrative (that is, attributable to improper execution of the process). Both Parties at the national level will have direct involvement in the monitoring process. The focus of language contained in Section 6 is systemic problems that, if identified, would require joint corrective action by the Parties. It is recognized that administrative problems would require appropriate Management-initiated action to ensure those responsible for proper

program execution are held accountable and are, therefore, specifically excluded.

Subsection 6.b—When possible systemic problems are identified by intermediate level parties, they will be discussed at that level and, if determined to warrant further examination by the National Parties, will be referred to the Forest Service Partnership Council (FSPC). Problems identified by the Local parties should be referred to the intermediate-Level Parties for review and a determination whether subsequent referral to the FSPC will be made.

NOTE: Issues/questions the Union and/or Management have regarding Article 32 contract interpretation should be raised to the National Parties for clarification.

PRE-WRAPS Criteria

The issue of a need to facilitate changes to the organization by moving employees internally through some procedure other than that required for employees subject to displacement under Article 32 (Workforce Restructuring and Placement System) of the Master Agreement has been recognized by both Management and the Union. This need is based on current and anticipated budgets as well as shifts in program emphases; the Forest Service will likely experience the need to adjust its organization.

The following criteria must be met by all plans developed for the purpose of permitting:

- The reassignments.
- Repromotions.
- Voluntary change to lower grade.

of employees in conjunction with changes in the organization PRIOR to using the WRAPS process found in Article 32. These criteria have been developed in partnership and approved by the Forest Service Partnership Council. These criteria (that is "rules") are referenced in Article 32, Section 1 of the Master Agreement.

Criteria for Establishing Pre-WRAPS Plans:

1. Any Forest Service unit may develop a "Pre-WRAPS" internal placement plan. "Units" may be no smaller than a competitive area defined under Article 32. The Pre-WRAPS Plan at a minimum applies to all employees within the defined unit affected by the planned changes.
2. WRAPS-listed employees in the unit may also participate in the Pre-WRAPS plan while they continue to be available for placement under WRAPS rules.
3. Reorganizations that result in no requirement to establish a new position description because the position in the new organization is identical to or 80% similar to that in the old organization should not be part of a pre-WRAPS plan. Employees in such positions are "moved" with their position into the new organization.
4. Pre-WRAPS plans must be developed in writing. Such plans should be developed jointly by Management and Union. Local and Intermediate plans must be approved by both parties at the Intermediate level. Plans involving 2 or more Intermediate Level parties, need the approval of all the Intermediate-Level parties involved.
5. Pre-WRAPS plans are not precedent setting.
6. Pre-WRAPS Plans do not require a formal identification procedure. Positions to be abolished and affected employees will be identified in accordance with provisions of Article 32.3-4 and/or agency RIF regulations only after placements under a pre-WRAPS plan have been made and the pre-established ending date of the plan has passed or the pre-WRAPS plan cancelled. A unit cannot be implementing a Pre-WRAPS plan while simultaneously formally identifying which employees will be placed on WRAPS.
7. Pre-WRAPS plans may cover more than one time period, but all such periods must be included in the approved pre-WRAPS plan, or an approved amendment to that Plan. For example, a unit may have an approved two phased Pre-WRAPS Plan, having an initial Pre-WRAPS period to effect reassignments in conjunction

with reorganization. Then, after the pre-WRAPS period ends, the unit may fill positions using competitive processes or WRAPS. At some point after the positions are filled competitively or from the WRAPS list, creating other vacancies on the same unit, a second phase of the pre-WRAPS Plan may go into effect for a defined period of time, permitting additional reassignments.

8. Pre-WRAPS plans must contain the following information:

   a) A general description of the scope and nature of the organizational changes;

   b) Old and new Management approved organization structures or staffing plans that include all of the positions involved;

   c) Plan goals;

   d) Placement procedures under the plan;

   e) Specific beginning and ending dates that encompass the minimum time necessary to achieve the Plan goals;

   f) If required, a Civil Rights Impact Analysis regarding the potential impacts of the placement procedures;

   g) If both bargaining and nonbargaining employees are covered by the plan, a statement about differences in placement procedures (if any) under the plan; and

   h) Employee communication plans.

9. Laws and governmentwide regulations, applicable provisions of the Master Agreement, and higher priority placement considerations as contained the in the FSPC-approved "Order of Consideration when Filling a Vacancy," cannot be set aside.

10. Positions are filled through pre-WRAPS procedures only by lateral reassignment, repromotion, voluntary change to lower grade, or voluntary tour reduction. Reassignments may be voluntary and/or involuntary. Procedures and arrangements will be developed by the parties and incorporated into the plan. Before making placements, consideration should be given to the potential impacts such actions might have on any other appropriate procedures used to accomplish employee placements, such as WRAPS or RIF procedures. For example, it would be very disruptive to the workforce of a unit which makes a number of placements under a pre-WRAPS plan and then goes into downsizing

that results in the identification of the previously placed employees under WRAPS as being subject to displacement.

ARTICLE 33 – FURLOUGHS

Subsection 12.b—Although Management is obligated to notify the Union and negotiate procedures per Section 4.c, Management still has final discretion in determining whether furlough days will be consecutive or nonconsecutive. Language also requires Management to consider employee personal needs in determining which days will be worked during nonconsecutive furloughs. An additional obligation to bargain is incurred when Management, after the initial furlough notices have been given, finds it necessary to increase the number of days in the furlough.

Section 13—This section draws attention to the statutory restriction that prohibits furloughed employees from being used as volunteers to perform their regular work.

ARTICLE 34 – TRANSFER OF FUNCTION

Examples of appropriate topics for negotiations are the content of notices (within the guidelines), definition of local commuting area, other procedures of the transfer of function, and arrangements for the affected employees.

ARTICLE 35 – REDUCTION-IN-FORCE

General Comments—This article has been substantially rewritten and reordered from the 2000 Master Agreement.

Section 1—Recognizes that governmentwide regulations set forth in 5 CFR 351 are controlling for the basic processes and mechanics of conducting any RIF, and also provides for certain employee benefits. The singular citation of 5 CFR 351 is not intended to be, nor interpreted to be, exclusive or exclusionary. There are numerous

governmentwide regulations in addition to 5 CFR 351, which further address employee rights and benefits applicable to RIF actions. Article 35 articulates the Parties agreement on a number of items for which the Code of Federal Regulations provides the agency discretion, but this article is not all-inclusive of the Parties agreements on RIF related issues. (See discussion at Subsection 1.e. below). The Parties intent here is to narrow the scope of local and intermediate level negotiations for any RIF by establishing certain provisions for the consolidated Bargaining Unit's.

Subsection 1.a—The disruption, costs, and regulatory requirements of conducting RIF dictate that RIF is not a decision to be made lightly. Management will avoid RIF through attrition, internal placements via the WRAPS, and cost reduction efforts whenever feasible, recognizing the decision to conduct a RIF is ultimately a Management right.

Subsection 1.b—This consideration may be applied only in the context of placement into a vacant position and has nothing to do with determining assignment rights involving encumbered positions. The phrase "may consider" reflects that this is not an employee entitlement, and it is entirely at Management's discretion to apply or not apply these options for filling any given vacancy based on Management's "job related" determination of its need to have a fully qualified employee in that position. The term "retraining" has been added to reflect that it is also a Management option. The phrase "a specified period up to 365 days" reflects both that there may be legitimate job-related reasons for a shorter timeframe and that the Parties intend that the timeframe be identified in advance so that both the affected employee and the receiving unit have a clear understanding of when the employee will be expected to be at a full performance level in the offered position.

Subsection 1.c—Reflects provisions of 5 CFR 330. The phrase "and explanation of" obligates Management to provide affected employees with written information about, and specific orientation to, the various external placement assistance programs and available WIA benefits.

Subsection 1.e—Reflects and recognizes that in addition to 5 CFR 351, policies and provisions of the USDA and Forest Service manuals apply. The Parties recognize that many of those policies and provisions carry a bargaining obligation but are not covered by Article 35. The intent is to provide the Parties the flexibility to address issues of any particular RIF at the appropriate level without reopening the Master Agreement. Notwithstanding, the Parties recognition of the need to address locally specific issues through local negotiations, the Parties have agreed to certain RIF policies and ground rules as national agency-wide standards, which are documented in separate agreement and are provided as an attachment to the Annotation for this article.

Subsection 2.a—The Parties recognize that circumstances for prospective RIFs may limit Management's ability to furnish all the information listed in Subsection 2.a. at the time RIF authority is requested. However, Management is still obligated to provide the information listed at least 75 days prior to the RIF effective date. The Parties also recognize that the timing and content of this notice is sufficient to meet the intent of Article 11 notice and it would be redundant to require both.

Subsection 2.c—"Other RIF documents" could include, but are not limited to the agency's justification for the RIF, exceptions to the normal order of release affecting that employee, any ground rules developed for that specific RIF, and benefits information.

Subsection 3.c—If permissive rights are negotiated in a specific situation, such an election does not constitute an election by Management to negotiate permissive rights in any other situation including situations on that unit. Similarly, this subsection does not bar Management from negotiating on its permissive rights in other specific situations.

Section 4—"Early out" refers to Voluntary Early Retirement Authority (VERA).

Section 6—The employee's OPF is used as the exclusive information basis for making determinations of any RIF actions, so the accuracy and currency of the contents of the OPF is essential. Accurate documentation of the employee's entire employment history,

training, and education are critical in determining the employee's placement opportunities and other benefits. In addition, it is important, though not required, for the employee to provide an up-to-date resume or bio-sketch to be used in determining his or her qualifications should it be necessary for Management to consider offering the employee placement into a vacant position. Management may provide the employee a summary of "RIF essential" data contained in the employee's OPF, which is an optional method of allowing the employee to check the accuracy of the data, however this does not replace or reduce the employee's right to have access to his or her full OPF if the employee chooses to do so.

Section 7—The phrase "during the life of the RIF" means the entire time frame during which RIF actions are being determined and implemented.

Subsection 8. (a.b.&c.)—It is recognized that FLRA case law states that competitive areas are nonnegotiable, but that the Parties have agreed to engage in predecisional discussions when changes to the competitive areas are planned or proposed.

Subsection 8.d—This subsection sets a new standard "default" commuting area of 49 miles, which reflects recent changes in the Federal Travel Regulations. The commuting area is measured from the duty station, not the employee's residence. It also empowers the Parties at the affected level to negotiate and describe local commuting area if the default definition does not fit their local conditions. If the Parties can't agree on a nonstandard local definition, they are required to use the standard definition. If they agree, their agreement on a nonstandard definition is subject to higher-level approval.

The key consideration is contained in the first sentence in the phrase "can reasonably be expected to travel back and forth daily." Thus, the Parties intent here is not to be construed to mean 49 air miles, or simply drawing a 49-mile circle on a map. An example of one of the criteria Parties might consider in local negotiations is that the commute would, in most situations, be via year-round publicly maintained road systems. Though uncommon, it may be quite normal and reasonable in some locations for a

commute to include forms of transportation other than via automobile, for instance, a ferry system, or commuter train.

Section 10—This section provides priority reemployment to employees separated through RIF, recognizing the offer for reemployment is subject to any listing established by the Parties, in the "Order of Consideration When Filling a Vacancy" (FSH 6109.12 chapter 20) that ranks the order of methods used to fill vacancies.

REDUCTION-IN-FORCE
POLICIES AND GROUND RULES

This document supplements 5 CFR 351 by addressing policy decisions needed in areas in which the Forest Service has discretion in conducting a Reduction-in-Force (RIF). These policies, along with language in negotiated agreements and information specific to a given RIF, will serve as the agency policy and groundrules for RIF.

Competitive Area

The competitive area consists of all positions in a Forest Service unit under separate administrative authority in the local commuting area. Forest Service competitive areas are included in Appendix D of the Master Agreement between the Forest Service and Forest Service Council of the National Federation of Federal Employees and will also be posted on the Forest Service Human Resources Intranet Web site.

Commuting Area

One or more population centers in which employees can reasonably be expected to commute to and from work every day. Normally, the commuting area is within 49 miles of the duty station unless the Parties negotiate a different area based on local commuting patterns.

Prohibition on Use of Pre-WRAPS in RIF Situations

Pre-Workforce Restructuring and Placement System (WRAPS) should not be used when a RIF is anticipated within the same competitive area. If a unit has begun a pre-WRAPS plan and then identified that a RIF will be needed, the pre-WRAPS plan must be halted as part of the personnel action freeze.

Use of WRAPS

When RIF and WRAPS are implemented simultaneously within a given competitive area:

(1) RIF procedures will be used to identify the affected employees for RIF and the same employees will be the affected employees in WRAPS.

(2) RIF procedures will be used for placement of affected employees within the competitive area. If there are vacancies within the competitive area that will not be filled through RIF, WRAPS procedures will be used as appropriate.

(3) WRAPS procedures will be used for placement of affected employees outside the competitive area, but RIF timelines will take precedence.

If employee(s) had been registered in WRAPS at the time that a unit determines that a RIF is going to be needed in the competitive area, the unit must first consider whether the abolishment of the position that necessitated the WRAPS listing should be included in the list of abolished positions under RIF. Further, even if the unit would not otherwise include the position abolishment under RIF, the unit must identify the RIF impacts to see if the individual(s) identified under WRAPS will be affected by the bump and retreat process of RIF. If so, the RIF procedures will also be used to identify the affected employee(s) for the WRAPS listed employee(s).

Buyout[1] and/or Early Out[2] Exclusion

1. Voluntary Separation Incentives Program (VSIP).

Any employee who has been granted a buyout /early out, but is being retained for a designated period, will not be included in a RIF of their competitive area. The position occupied will be considered an abolished or vacant position.

Holiday Exclusion

Neither issuance of specific RIF notices nor RIF effective dates shall occur in the period of December 15th through January 5th of any year.

Performance Appraisals

The three most recently completed annual performance ratings of record during the 4-year "Look-back" period are used for crediting performance during RIF.

Look-Back Period: A 4-year period looking backwards from an established cut-off date. It is used to establish what performance appraisals will be considered in a RIF.

Cut-Off Period: To be credited for use during a RIF, the Servicing Human Resources Office (SHRO) must have received the appraisal document at least 30 days prior to issuance of specific RIF notice. A specific cut-off date must be established for each RIF and publicized to employees. No appraisals received after that cut-off date will be used to determine retention standing.

Modal Rating: The Forest Service modal rating pattern for performance appraisals is "Successful" and is credited with 12 years of additional service credit. Any employee who has received no ratings or less than three in the "Look-back" period will be credited per the instructions in 5 CFR 351.504 (c) (2).

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2. Voluntary Early Retirement Authority (VERA).

When employees have performance ratings from other agencies during the “Look-back” period, they will have all successful ratings or above credited with 12 years additional service per 5 CFR 351.504 (e).

Personnel Action Freeze

Any competitive area in which a RIF is anticipated will be frozen at least 60 days prior to issuance of a specific RIF notice and will remain frozen until the effective date of the RIF. This freeze also includes all vacant positions at or below the grade of the highest competing employee in the RIF.

During the freeze, the SHRO will only process emergency, temporary personnel actions related to fires, floods, national emergencies, and other actions as defined by the Washington Office. The organizational freeze includes all accessions, movements, tour changes, and classification actions[3]. The RIF retention register must be projected forward to the effective date of the RIF for actions such as changes in tenure, career ladder promotions, separations, and other actions that would affect an employee’s RIF retention standing. Employees on details and temporary promotions will be included in the RIF based on their positions of record (their current permanent position).

During the RIF period, career ladder promotions[4], court-ordered actions and actions ordered by a third-party agency (such as an Equal Employment Opportunity Judge’s order, Office of Personnel Management classification appeal decision, etc.) will not be subject to the freeze.

Exceptions to this freeze may be requested of the line officer who initially authorized the RIF, but are expected to be rare. Although recruitment actions are frozen, they still need

[3]. See 5 CFR 351.202 (c) (3) for further information about classification actions.

[4]. Supervisors must prepare the usual personnel action requests for career ladder promotions.

to be submitted so that those vacancies can be used appropriately in the RIF.

No Assignment Rights for Temporary Employees, Reemployed Annuitants, and Term Employees

In Round 1 of RIF, all temporary employees will be released from the competitive level before any permanent employee is released from that competitive level. Reemployed annuitants serve at the will of the local line officer and thus are treated like temporary employees. In Round 2 of RIF, tenure group III employees (term employees) will have no assignment rights.

Exceptions To Order of Release

All exceptions, and the reasons for exceptions, must be documented on the retention register. The mandatory exceptions for release of returning military employees and for retirement or continuation of health benefits are defined in (5 CFR 351.606). All other temporary or continuing exceptions provided for in RIF regulations must be approved by the line officer who approved the RIF and should be rare. Exceptions must be maintained as part of the permanent RIF files and notices given consistent with 5 CFR 351.608(g).

Exceptions to the “undue interruption” criteria used in RIF placement decisions may be granted only when filling vacant positions. Such vacancies should be identified to every extent possible prior to issuing RIF notices.

Tiebreaker

When two or more employees have identical retention standing and a tiebreaker is needed, a predetermined random number generator will be used and compared with the last digit of each individual’s Social Security number. The employee whose last digit is closest match to the random number will be considered to have the higher retention

standing. If the last digits are equally close, the next to last digit of each employee's Social Security number will be used, and so on, until the tie is broken.

Qualifications Deadline

Any additional information an employee wishes to submit regarding his or her qualifications must be received by their SHRO by the cutoff date established by the SHRO for the RIF. Employees will be notified of the cutoff dates established for the RIF and have at least 14 days before the deadline for receipt of qualifications updates. Any Bargaining Unit officials for the competitive unit(s) involved will receive a copy of the notice at least 1 full day prior to the notice to employees. Additional informational material will generally be accepted up to 30 calendar days in advance of the specific RIF notice; however, changes in tenure group status may be accepted up to the effective date of the RIF.

Employees are encouraged to create a profile in Avue and use the generated resume as an attachment to their WRAPS registration, to facilitate qualifications review. Other forms of qualification/application material such as an OF-612, SF-171, or other form of resume will also be accepted.

Subject Matter Expertise

Subject matter experts may be asked to provide advice in making qualification determinations. All determinations will be based solely upon evidence found in official personnel records. Official personnel records include those in a RIF file that is established for each affected employee that may contain records (e.g., resumes) that do not belong in the Official Personnel Folder.

Use of Vacancies

1. Permanent vacancies (including those that might be filled at less than full

performance level or have previously been filled as virtual positions) will be identified prior to initiating a RIF. If a vacancy will not be available for offers (e.g.,, line officer positions) the reasons for excepting the position will be maintained in the unit's RIF file. A list of positions available for offers will be provided to the local Union official (if any) at the beginning of the RIF.

2. Permanent vacancies within impacted competitive levels will be used in Round 1. Vacancies that remain unfilled after Round 1 will be offered in Round 2.

3. Vacancies, regardless of work schedule or grade, that remain unfilled after completion of Round 2 of RIF, may be offered to affected employees in lieu of separation-RIF. When more than one employee is available for placement, positions will be offered in retention order.

4. Employees separated in RIF may be re-employed in temporary vacancies only after a 3-day break-in-service. A temporary need related to the positions that are being abolished will be handled as an exception to the order of release and not as a temporary position. (See Exceptions to Order of Release section.)

5. When a supervisor/manager in an area undergoing RIF has a vacancy in a position outside the competitive area, the manager has the discretion to identify the position as a virtual position or as a position within the commuting area (in which case it may constitute a valid job offer) or identify it in some other location.

6. Exceptions to the "undue interruption" criteria used in RIF placement decisions may be granted only when filling vacant positions. Such vacancies should be identified to every extent possible prior to issuing RIF notices.

Note: In order to identify all appropriate vacancies, line managers are accountable for assuring that all vacancies to be filled are presented on an SF-52 to SHRO during the RIF period. Vacancies not filled in RIF will be subject to placement from the

Reemployment Priority List and other priority placement mechanisms after the RIF.

Content of RIF Notices

The Parties at the national level will agree on the language of general and specific RIF notices prior to their being issued. Local Parties may supplement the general letters with required local information (such as contact information).

Delivering the Specific RIF Notices

The lowest-level line officer of the affected unit or another appropriate Management official will deliver the specific RIF notices to his or her affected employees. Supervisors should make every effort to ensure employees are present on the delivery date of the notices, including canceling leave as appropriate.

In the event an employee is not present at his or her duty location on the day the specific RIF notices are issued, the notice will be sent via certified mail with a copy sent via regular first class mail to the employee's legal address of record. A 5-day delivery timeframe will be presumed, even if the employee refuses to accept the letter or claim/pick up from the Post Office.

RIF Offers

Employees will have a response time of 3 workdays to accept or decline RIF offers. The 3-day clock starts at 5 p.m. on the day of personal delivery of notice by Management official. If the notice is mailed, the employee's 3-day response period will begin on the fifth day following the date on the letter.

Exemptions from RIF

Management shall have discretion to determine whether an excepted service RIF will

also be run in the competitive area undergoing a RIF. Presidential Management Fellows and Fire Apprentices, regardless of the appointment authority they are hired under, shall be exempt from RIF. Positions that are formally designated developmental (e.g., grades 5-7entry level) shall also be exempt if they meet the Office of Personnel Management (OPM) criteria. Two-grade interval positions are generally developmental at the GS-5-7 level but must be reviewed to ensure that formal designation is appropriate. Only those employees that are on a formally designated detailed training career plan will be exempt. Employees in developmental positions that do not have detailed career plans will be included in the RIF. This does not include all general career ladder positions, such as those advertised at GS-11-12. Units will not delay promotion to the target level for the sole purpose of avoiding RIF. Units undergoing RIF will keep a list of all such positions and will make it available to local Union officials (if any) upon request.

We note that Student Career Employment Program (SCEP) that are converted to competitive service will be included in the RIF. Once SCEPS have been converted they are not considered “formal trainees” under OPM regulations.

Policy of Least Disruption

“The policy of “least disruption” will be used in RIF. This means:

1. In Round 1 there will be no intervening displacements. When the position abolished is occupied by someone other than the individual at the bottom of the competitive level, the employee in the abolished position will be reassigned to the continuing position occupied by the person with the lowest retention standing, with the exception of the Holland, Hatrick, and Richardson v. Army Merit System Protection Board decision. This case directs agencies that, notwithstanding a policy of least disruption, tenure group I employees will not be placed in term or other nonpermanent positions held by tenure group III employees, if the same competitive level includes tenure group II employees.

2. In Round 2, when both a vacancy and occupied position at the same grade level are

valid offers, the vacancy will be offered. If more than one vacancy is a valid offer, any of the available vacancies may be offered.

3. When two or more occupied positions at the same grade level are possible offers for placement, the offer will be made to the position occupied by the individual with the lowest retention standing (with the Holland Decision, 84 MSPR 269, as an exception to policy).

Lines of Progression

Lines of progression that are used for applying the bump and retreat rights of individuals in RIF will be specific to the competitive areas. For example, if a competitive area applies “one-grade interval” to the GS-462 series for some kinds of positions, they have set a precedent (past practice), and must continue this practice into the RIF. Conversely, if a given position or type of position has previously been filled as a GS-462-8/9/11 within the competitive area, the line of progression for that position would not include GS-10. However, new vacancies created would follow current agency direction (not to establish 2-grade interval career ladders within single grade-interval positions).

Records Retention Requirements

All records relating to a RIF must be retained for at least 1 year after the date that specific RIF notices are issued.

AUTORIF

Management agrees that the Union may have up to three Union members attend the Autorif training sessions as they are given to human resources specialists.

ARTICLE 36 – UNEMPLOYMENT COMPENSATION

Section 6—Management's responsibility is limited to providing employees who are being separated or placed in nonpay status with the necessary forms and information to enable the employee to understand how to apply for unemployment compensation. The Union recognizes not all States permit distribution of unemployment compensation application forms outside their offices and that it is the State (not the Forest Service) who determines eligibility for employment compensation. In situations where application forms are not available, general information on how to apply for unemployment compensation should be provided. Whether the material is in the form of State-produced brochures, or handouts prepared by the Forest Service.

ARTICLE 37 - VOLUNTEERS AND GOVERNMENT-SPONSORED WORK PROGRAMS

Section 1—The intent of this section is to be consistent with the Volunteers in the National Forest Act, or other enabling laws, grants, and program guidelines that contain language prohibiting the displacement of employees. The second sentence reinforces that it is not appropriate to "require or request" which employees volunteer their time. This is to protect employees from being placed in any situation that could create the appearance that volunteering his or her time is expected, or will provide any special consideration that could affect his or her employment. This section prohibits Bargaining Unit employees from being supervised by volunteers in supervisory positions.

ARTICLE 38 – CONTRACTING WORK OUT

Subsection 1.b—Note this subsection refers to the decision to go to contract under any decision-making process.

Section 2 – Releasable information includes, but is not limited to, copies of:

a. Annual procurement plans including updates.
b. Bid solicitation, invitation for bid, or request for proposal.
c. Correspondence from higher authority directing the cost study.
d. Correspondence from Department of Labor regarding certification of a wage rate.

e. The performance work statement, statement of work, or contract specifications.
f. The organization plan that supports the Program of Work Statement (in-house, residual, etc.).
g. All changes to the performance work statement.
h. Bid abstract (including Government estimate after bid opening), bid results, awarding dates, and timeframes for implementation.

Section 4—The intent of the Parties is to allow the review of both the in-house cost estimates used under the OMB Circular A-76 and the Independent Government Estimates referred to in the Federal Acquisition Regulation.

When appropriate, in-house cost estimates and/or Independent Government Estimates can be sent via fax or through hard copy mail instead of incurring travel and per diem costs.

Section 5—Examples of appropriate topics for negotiations include the use of Human Resources tools, information and training sessions for employees, and transitioning to the new service provider.

Section 6—The intent of the Parties is that the posting will be at work locations but the exact method of the posting of the notice is not given to allow flexibility (that is, it can be on any bulletin board, sent via e-mail, etc.), nor is it required for any specific work location, such as fire camps, work-at-home locations, etc.

Section 7 – In-sourcing guidelines are mandated by Public Law 111-8, Title VII, Section 736. This does not apply to the Enterprise Program.

ARTICLE 39 - VOLUNTARY ALLOTMENT OF UNION DUES

No Annotation

ARTICLE 40 - PILOT PROJECTS/DEMONSTRATION PROJECTS

No Annotation

ARTICLE 41 – CIVILIAN CONSERVATION CORPS

No Annotation

ARTICLE 42 – PERSONAL HARDSHIP

Subsection 3.a—Requests will generally go to the first-line supervisor or the unit manager. Accommodations may include, but are not limited to, details, reassignments, exceptions to directed reassignments, or changes to work schedules.

Subsection 3.b—This subsection encourages predecisional communication between Management and the hardship applicant. The intent is for the Management official to have a clear understanding of the employee's personal situation that gave rise to the potential hardship.

ARTICLE 43 – DRUG AND ALCOHOL TESTING PROGRAMS

General—At the time of the execution of the Master Agreement, marijuana is illegal under federal law. This is true regardless of any state or local provisions regarding medical marijuana use and the provisions of this article will apply.

Subsection 4.a—This provision is to encourage self-disclosure that an employee may not otherwise make due to fear of discipline. The Parties recognize that a pattern of impairment due to alcohol abuse or substance abuse is an issue that should be addressed by EAP referral or discipline. Substance abuse can include illegal use of legal drugs as well as illegal drugs. The Parties also recognize that there are instances

of impairment that do not involve substance abuse (for example, appropriate use of medication) and for which EAP referral or discipline is not appropriate.

Subsection 5.b.—An allegation of illegal drug use while off duty, even if it initiates a criminal investigation or arrest, does not constitute reasonable suspicion.

ARTICLE 44 – ALTERNATIVE DISPUTE RESOLUTION

No Annotation

ARTICLE 45 – DURATION AND EXTENT

No Annotation